

DRY ASSOCIATES LIMITED -VS- CAPITAL MARKETS AUTHORITY [2012]

Dry Associates (a financial firm) was penalized by the CMA following fraud.

They were subsequently fined without proper hearing

The court found that multiple letters exchanged and meetings held where the firm presented its side , the right to be heard had been satisfied.

This case established that “fairness does not always require a trial-like oral hearing.

Sometimes written representations are sufficient to meet the standard of procedural fairness.

REPUBLIC -vs- Chuka University Ex- Parte Kennedy [2018]

Students were expelled following a disciplinary process they claimed was biased and procedurally flawed.

Students had been denied a lawyer

Improper disciplinary committee.

Students weren't allowed to question the people accusing them.

Even in educational institutions, the right to a fair Hearing (Art 50) and “Fair Administrative Action” (Art. 47) requires an impartial panel and the right to challenge evidence.

Adequate Notice

Vague terms not to be used. Offense must be clearly defined

Student must be allowed to tell their side of the story

Must be allowed to ring parent or guardian

In potentially serious cases like potential expulsion, courts have increasingly ruled that students should have the right to rule.

INTERNATIONAL CONVENTIONS OR TREATIES

KENYA is a signatory to several international human rights

Within the African Union: The foundational human rights document for the continent

Formally the Protocol to the African Charter on Human and People's Rights

Under Articles 9 and 11 of the African Charter and Articles 19 and 21 in

respect of Freedom of Expression.

Of ICPR.

In LOHE' ISSA KNOATE-VS- BURKINA FASO (AFRICAN COURT)

This is the “gold standard” for freedom of expression in Africa. The African Court ruled that criminal defamation (prison for saying something that hurts a reputation) violates the African Charter

The court held that imprisonment for defamation is disproportionate restriction on free speech.

In JOSHUA OTIENO AYIKA-VS- ATTORNEY GENERAL (2024)

The court ruled that a man charged with “subversion” under Section 77 of the Penal Code after tweeting a prediction about government takeover

The ruling: Justice Samuel Mohochi ruled that “subversion” was too vague and lacked clarity. He emphasized that under the African Charter and the Constitution, the State cannot be the “sole arbiter of truth”

The Key Legal Principals Used:

When Kenyan courts apply the African Charter to expression cases, they focus on a Three-Part Test:

Legality: Is the restriction clearly written in law? (if it is vague, like “annoying,” It fails).

Legitimacy: Does it serve a real purpose (e.g national security)?

Necessity/Proportionality: Is this the least restrictive way to achieve that goal?